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DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Proposal for a Sub-Commission study on indigenous land rights

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1. The present proposal is for a special rapporteur to be appointed, under the auspices of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, to conduct a study on mechanisms to secure the effective enjoyment of indigenous peoples' rights over lands and resources, with particular attention to constructive solutions to continuing problems in this regard.

Rationale

2. Central to the worldwide movement of indigenous peoples to secure social and economic justice after years of oppression and neglect is the issue of control or ownership of lands and natural resources. United Nations organs and Member States have increasingly acknowledged that lands and natural resources are essential to the economic and cultural survival of indigenous peoples and that many of the human problems faced by indigenous peoples are linked to the historical and continuing deprivation of ancestral rights over lands and resources.

3. As indigenous peoples have pressed claims to lands and resources, numerous States have enacted laws that in some measure uphold indigenous land rights or have established procedures for settling land claims. Such measures at the State level are encouraged by the development of relevant international standards and programmes. ILO Convention No. 169 inter alia affirms the rights of indigenous peoples to the lands they "traditionally occupy", while Agenda 21 of the United Nations Conference on Environment and Development links respect for indigenous land rights to the global policy of environmental protection and sustainable development. The World Bank's Operational Directive 4.20 establishes the recognition of customary or traditional indigenous land tenure systems as a premise of bank-assisted projects. The "Draft United Nations declaration on the rights of indigenous peoples", adopted by the Sub-Commission and now under consideration by the Commission on Human Rights, includes several articles concerning indigenous lands and resources, as does the draft of the Inter-American declaration on the rights of indigenous peoples developed by the Inter-American Commission on Human Rights.

4. Despite this progress, problems continue to abound which impede the effective enjoyment of indigenous land rights. Many States in which indigenous peoples live have yet to enact laws or policies concerning indigenous land rights, leaving indigenous peoples without sufficient means to press land claims and vulnerable to further dispossession of ancestral lands. As already noted, a number of States have enacted laws upholding indigenous land and resource rights, but in many of these countries the laws have not been followed by adequate implementing mechanisms and hence have had very little positive effect in the actual lives of indigenous people. Even in those countries where laws have been followed by implementing mechanisms or have entailed concrete land settlement procedures, such mechanisms often have remained mired in difficulty in the midst of contending political and economic forces. In virtually all cases in which indigenous peoples assert land claims, just and prompt resolution of the claims is impeded by a lack of institutional capacity and relevant expertise on the part of Governments.

5. As long as indigenous peoples continue without secure land rights and their land claims remain unresolved, their survival will remain imperilled and social conflict will be latent where it has not already erupted. At the same time, unresolved indigenous land claims undermine the stability of State land

tenure systems, and unstable land tenure in turn is an impediment to development initiatives and efforts at programmes for the environmental protection of still undeveloped areas.

6. The United Nations has already engaged in activity that lays the groundwork for a thorough inquiry into the subject of indigenous land rights. The Sub-Commission's Study of the Problem of Discrimination against Indigenous Populations (E/CN.4/Sub.2/1986/7 and Add.1-4), by Special Rapporteur, Mr. José Martínez Cobo, examined the issue of indigenous land rights from the standpoint of conditions existing prior to the early 1980s. The Working Group on Indigenous Populations has received information on the topic in the context of its mandate to review developments concerning indigenous peoples. And as indicated by the progress reports of the Special Rapporteur, Mr. Miguel Alfonso-Martínez, the Sub-Commission's soon to be completed study on treaties, agreements and other constructive arrangements between States and indigenous populations, will further identify the centrality of land rights issues. Also noteworthy is the United Nations sponsored Expert Seminar on Practical Experiences regarding Indigenous Land Rights and Claims, held in Whitehorse, Canada, in March 1996.

7. Further and more systemic inquiry and analysis concerning indigenous land rights as described below would be highly useful to indigenous peoples and States alike in their efforts to overcome continuing land rights problems and to establish peaceful relations based on respect for human rights and fundamental freedoms.

Scope and objective of the study

8. The purpose of the study would be to provide a detailed and updated account of the status of efforts to secure indigenous land rights and of the problems that continue to exist in this regard, and to shed light on potential solutions to such problems.

9. The Special Rapporteur for the land rights study would examine conditions concerning indigenous land rights throughout the world, paying particular attention to those situations in which indigenous peoples are currently asserting land claims. An examination of the history of events by which indigenous peoples have been disposed of ancestral lands would lend depth of understanding to the contemporary situations.

10. The study would seek to catalogue existing State laws, policies and procedures concerning indigenous land rights and identify problems in the implementation of such laws, policies and procedures.

11. Finally, the study would draw upon existing experiences to assess and propose constructive solutions to problems faced by indigenous peoples and States in securing the effective enjoyment of indigenous land rights.